IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2972 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGUNAGAR CO.OPERATIVE HOUSI-NG SOCIETY - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR UTPAL M PANCHAL for Petitioner(s) : 1,
Mr. Dipen Desai, Asst. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR PRASHANT G DESAI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 04/05/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner society, through its Vice President, has prayed for a writ,

order or direction directing the Surat Municipal Corporation to make a proposal for variation under Section 70 of the Gujarat Town Planning and Urban Development Act [hereinafter referred to as “the Act”] qua the common plot of the petitioner society on Final Plot No. 28 of Town Planning Scheme No. 30-Rander. The petitioner has further prayed for an appropriate writ, direction or order restraining the respondents from taking over possession of the common plot of the petitioner society bearing Final Plot No. 28 in T.P. Scheme No.30-Rander and to direct the respondents not to implement the T.P. Scheme No. 30-Rander qua the common plot of the petitioner society.

2. The petitioner Society was on the land bearing Revenue Survey No. 14 admeasuring 13861 sq.mtrs., of land which consisted of a common plot. On implementation of the Town Planning Scheme No.30-Rander, Revenue Survey No. 14 was given O.P. No. 8, and on finalisation of the said scheme the petitioner society is allotted Final Plot No. 28 admeasuring 12686 sq.mtrs., of land and the remaining portion of

the land of O.P. No. 8 which was common plot of the petitioner society is reserved for S.E.W.S. Housing. On finalisation of T.P. Scheme members of the petitioner came to be served with notice under Section 67 of the Act as well as under Section 68 read with Rule 33 of the Act whereby they were informed that they were allotted Final Plot No. 28 and rest of the land of O.P. No.8 is reserved for S.E.W.S. Housing which is given Final Plot No. 27. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application for the aforesaid reliefs with the contention that though the petitioner has submitted the application dated 11.11.2003 for variation of the scheme under Section 70 of the Act, no decision has been taken on the said application.

3. Shri UM Panchal, learned advocate appearing for the petitioner society has submitted that the respondents have taken the common plot of the petitioner society which is carved out from O.P. No. 8 which is now given Final Plot No. 27 and reserved

for S.E.W.S. Housing. It is submitted by him that on taking over the aforesaid land and Final Plot No. 27 there will not be any common plot in the petitioner society and as per the provisions of GDCR and building bye-laws and regulations a common plot in a society is a must and therefore taking over of the common plot would be contrary to the GDCR and building by-laws and regulations. It is further submitted by him that adjacent to the common plot of the petitioner society there are two huge open lands bearing Final Plots No. 26 and 21 available and the same are vested in the respondent Corporation and therefore taking over the common plot by reserving the same for SEWS Housing is illegal and/or unwarranted. It is submitted by him that the petitioner society submitted their objections on 11.11.2003 and thereafter nothing has been heard from the authorities nor any action has been taken till date in response to their request to vary the scheme in exercise of powers under Section 70 of the Act. He has further submitted that this Court has already taken the decision in Special Civil Application No.

5422 of 2005 along with other cognate matters in the case of *Gangaram Damu Wadekar and 329 others Vs. Commissioner, Surat Municipal Corporation*, by observing that the grievance can be resolved by virtue of the provisions under Section 19 of the Act and those petitioners were directed to file representation with the respondents in that regard, and they were protected till the representations are made. It is therefore requested to direct the respondents to vary the Town Planning Scheme No. 30-Rander and till then not to implement the Town Planning Scheme by further restraining the respondents from taking over possession of Final Plot No. 27 from the petitioner.

3.1. By way of Rejoinder, the petitioner has relied upon some instructions issued by the Town Planning Department, dated 15.10.1990 which require consideration while preparing the Town Planning Scheme. However, it is required to be noted that nothing is on record to show that the petitioner has at any point of time submitted any objection. It is

also required to be noted that the petitioner has not challenged the finalisation of Town Planning Scheme and after finalisation of Town Planning Scheme sanctioned by the State Government when it has become a Statute, the aforesaid instructions at this stage are not required to be considered.

4. In response to the notice issued by this Court, Shri Prashant Desai, learned advocate appears on behalf of Surat Municipal Corporation and Shri Dipen Desai, learned AGP appears on behalf of respondent No.1 State Government. An affidavit-in-reply is filed by the Town Planning Officer, Town Planning Scheme, Surat No.30. It is submitted by the learned advocates appearing on behalf of the respondents that Town Planning Scheme No. 30 has become final after following due procedure as required under the provisions of the Act and against the original holding of 13861 sq.mtrs of land, after deduction the petitioner society is allotted 12034 sq.mtrs. of land, and there will be only 8.47% deduction against the average ratio of deduction in

respect of other landowners amounting to nearly 30%. It is submitted that once the Town Planning Scheme has become final and sanctioned by the State Government the same has become part of the Statute. It is further submitted that the objections submitted by the petitioner dated 11.11.2003 were subsequent to sanctioning the Town Planning Scheme by the State Government. It is further submitted by them that Section 19 of the Act would not be applicable and at the most Section 70 of the Act can be made applicable, however it is ultimately for the appropriate authority to take decision whether to vary the scheme or not. It is also specifically denied that there are other adjacent plots available. It is further submitted by them that merely because the common plot is not available is no ground not to implement the Town Planning Scheme. Not a single building is likely to be affected and under the compulsory deduction only common open plot is taken away which is given Final Plot No. 27 and which is reserved for SEWS Housing. The learned advocates appearing on behalf of the respondents have relied

upon the judgment of the Hon'ble Supreme Court in ***N. Nanalal Kidawala and another vs. State of Gujarat and Others,*** reported in *AIR 2006 S.C. Page 1* and submitted that once a Town Planning Scheme has become final it is the duty of the Town Planning Authority to implement the scheme irrespective of any proposal for variation. Under the circumstances, it is requested not to grant any relief by which the respondents are restrained from implementing the sanctioned finalised Town Planning Scheme. Under the circumstances, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the Town Planning Scheme No. 30-Rander is finalised and has been sanctioned by the State Government after following due procedure as required under the provisions of the Act. Nothing is in record to show that prior to finalisation of Town Planning Scheme at any point of time the petitioner had submitted any objection. Under the provisions of the Act on

finalisation of Town Planning Scheme sanctioned by the State Government, it has become part of the Statute which cannot be challenged. It is also required to be noted that in the present Special Civil Application the petitioner has not challenged the Town Planning Scheme No. 30-Rander which has become final and the only prayer of the petitioner is to direct the respondent Corporation to vary the scheme and/or to make a proposal for variation under Section 70 of the Act and till then not to implement the Town Planning Scheme. Against the original holding of the petitioner society, i.e., O.P. No. 8 admeasuring 13861 sq.mtrs., of land the petitioner society is allotted Final Plot No. 28 admeasuring 12034 sq.mtrs., of land and the rest of the land is given Final Plot No. 27 which is reserved for SEWS Housing. The total deduction comes to 8.47% and the normal deduction, so far as other landowners are concerned, comes to 30%. Therefore, as such the petitioner society is at an advantageous position. The question whether the scheme should be varied nor not is to be considered by the respondent

Corporation, who is the appropriate authority, and no writ can be issued directing the Corporation to send a proposal for variation of the scheme, more particularly when nothing is on record to show that any objection was submitted before finalisation of Town Planning Scheme.

6. At this stage, it is necessary to lay emphasis on the Judgment of the Hon'ble Supreme Court in the case of ***N. Nanalal Kidawala and another vs. State of Gujarat and Others*** (supra) wherein the Hon'ble Supreme Court, considering various provisions of the Town Planning Act, more particularly Section 67 and 68 of the Act read with Rule 33 of the Rules, has held that once a Town Planning Scheme has become final it is the duty of the appropriate authority to implement the same irrespective of any proposal for variation. In the present case, there is no proposal for variation of the scheme and as stated above finalised scheme has never been challenged by the petitioner. Once the scheme has become final, and

when the authority has issued notice under Section 68 of the Act read with Rule 33 for implementation of the said scheme and notice has been issued, it cannot be said that there is any illegality committed by the respondents. On the contrary, the respondents are performing their statutory duties to implement the Town Planning Scheme. Considering the judgment of the Hon'ble Supreme Court, no relief can be granted in favour of the petitioner directing the respondents not to implement the Town Planning Scheme once the same has become final irrespective of any proposal for variation.

7. So far as the contention on behalf of the petitioner society that there will be no common plot and the same will be contrary to the building by-laws/regulations is concerned, it is required to be noted that once the Town Planning Scheme has become final it becomes a Statute and the provisions of the Town Planning Act will override other provisions of the Act. As stated above, at no point of time earlier the petitioner submitted any objection and

merely because there being no common plot is no ground to challenge the same more particularly when the scheme has not been challenged. The respondents had issued the notice pursuant to the scheme having become final which is now required to be implemented. Under the provisions of Sections 70 and 71 of the Act, it is ultimately for the appropriate authority to take appropriate decision whether to send a proposal for variation of the scheme or not. Section 19 of the Act would not be applicable as contended on behalf of the petitioner as the same would be applicable for variation of the development plan. That is not the case here and therefore the reliance placed upon the order of this Court in Special Civil Application No. 5422 of 2005 and other cognate matters is absolutely misconceived and the same will not be of any assistance to the petitioner.

8. Under the circumstances and for the reasons stated hereinabove, the petitioner is not entitled to any relief, more particularly, the one restraining the respondents from implementing the Town Planning

Scheme which has become final and hence the petition is required to be dismissed and is accordingly dismissed. Notice is discharged. The ad-interim relief, granted earlier, stands vacated forthwith.

8.1. At this stage, the learned advocate appearing on behalf of the petitioner has requested to continue the ad-interim relief granted earlier so as to enable the petitioner to approach the higher forum. However, in the facts and circumstances of the case, more particularly when the respondents are performing their statutory duties in implementing the Town Planning Scheme and considering the ratio of the judgment of the Hon'ble Supreme Court in the case of ***N. Nanalal Kidawala and another vs. State of Gujarat and Others*** (supra), the said prayer is rejected.

[M.R. Shah, J.]

RMR.